



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

**AMERICAN ASSOCIATION OF UNIVERSITY
PROFESSORS, UNIVERSITY OF NEW
HAMPSHIRE CHAPTER**

Petitioner

and

**THE UNIVERSITY SYSTEM OF NEW
HAMPSHIRE**

Respondent

CASE NO. U-0613

DECISION NO. 90-93

APPEARANCES

Representing the American Association of University Professors:

Steven L. Finner, Esq., Counsel

Representing the University System of New Hampshire:

Nicholas DiGiovanni, Esq., Counsel

Also appearing:

- Steven T. Fan, PhD. Chrmn. Dept. of Chemical Engin., UNH
- Ludwig Balling, PhD., Professor of Physics, UNH
- Robert E. Craig, PhD., Assoc. Prof. of Political Science, UNH
- Robert O'Neill, Asst. Prof. of Philosophy, P.S.C.
- Claire Van Ummerson, Chancellor, USNH
- Joan Tambling, Dir. Human Resources, USNH
- Stewart Palmer, Dean of College of Liberal Arts, UNH
- Roger Ritvo, Dean of Schl. of Health & Human Svcs., UNH
- Walter Eggers, Prof. of English, UNH
- Thomas P. Fairchild, Dean of the College of Life Sciences & Agriculture, UNH
- Ronald F. Rodgers, Esq., General Counsel, USNH
- Otis J. Sproul, Dean of the College of Engin. & Phys. Sciences, UNH

BACKGROUND

On June 1, 1990, the American Association of University Professors Chapter at the University of New Hampshire petitioned for the certification of a bargaining unit of "all full-time academic

faculty employed by the University of New Hampshire at Durham and Manchester, including librarians with faculty rank and department chairpersons." The University System of New Hampshire filed exceptions to the petition on June 14, 1990 setting forth objections to the inclusion of the department chairpersons and requesting that the definition of the appropriate bargaining unit be expanded to include all full-time faculty within the University System of New Hampshire who are not currently in a certified unit, having the effect of including full-time faculty at Plymouth State College, another institution governed by the University System Board of Trustees, but not including full-time faculty at Keene State College, yet another institution governed by the University System Board of Trustees, which already has union representation of the faculty. In addition, the University listed certain categories of personnel which were not mentioned in the Petition and which the employer believed should be excluded from the unit.

The Public Employee Labor Relations Board scheduled a hearing, and prior to the hearing, a prehearing conference to shape and limit issues. Prior to the full Board hearing, the parties met and agreed upon the inclusion or exclusion of certain employees, excluding from the petitioned unit faculty in residence, research faculty, extension educators, visiting faculty, part-time faculty and lecturers, deans and associate deans, library equivalent positions including the University Librarian, Associate University Librarian and two Assistant University Librarians, the Director of Environmental Research

Group, the Director of the Center for Humanities, the Director of the Thompson School, the Director of the Center for Educational Field Services, the Director of the Institute for Policy and Social Service Research, and the Director of the Institutional Research and Consulting Center. Further, the parties agreed that there are nine other directors who will be entitled to vote in any election under challenge, the propriety of inclusion or exclusion to be determined by the PELRB after the election if the counting of challenged ballots becomes dispositive.

The matters left unresolved prior to PELRB hearing are: (1) whether department chairpersons should be included or excluded from the unit; and (2) whether the unit should be comprised of those faculty at the University of New Hampshire (Durham and Manchester campuses) only; or whether Plymouth State College faculty should also be included.

The Public Employee Labor Relations Board held hearings on the matter on August 28, 1990 and August 29, 1990, at its offices in Concord, New Hampshire.

As further background, the parties referred to a prior decision of the PELRB in Case No. U-0601, Decision No. 76-02 (1976), which was sustained in relevant part by the New Hampshire Supreme Court in University System v. State of New Hampshire et al. In re University of New Hampshire, 117 NH 96 (1977). In that prior case, this Board determined that the appropriate unit for University System faculty would be full-time faculty including chairpersons and that a unit would be established for each institution in the University of New Hampshire, those institutions being the University of New Hampshire, Plymouth State College, and Keene State College. At hearing, the AAUP

urged the Board to uphold its prior decision since nothing had changed since that decision and the System argued that a fresh look should be taken at the issues since there had been changes since 1976, which warranted the crafting of a new unit. At hearing, the Board accepted joint evidence submitted by the parties including University System faculty salaries by rank and discipline, the University System Benefits Handbook, the University Standard Terminology Dictionary, the UNH Faculty Handbook, the Plymouth State College Faculty Handbook, the Bulletin of the University of New Hampshire, the University of New Hampshire at Manchester Course Bulletin, the University System Report of Trustee Committee on Cost Effectiveness, and the Plymouth State College Catalog. All of these items were for the current period. Since hearing, all of these documents have been reviewed by the Board. The University System presented 23 additional exhibits and the AAUP presented two exhibits.

FINDINGS OF FACT AND RULINGS OF LAW

The Board finds that although it crafted the appropriate unit in 1976, the passage of 14 years warrants a review of the facts and circumstances existing in the University System anew in 1990 and not just a comparison between the findings in 1976 and the situation which exists today to note changes. The Board will therefore examine the issues concerning the scope of the bargaining unit and the inclusion or exclusion of department chairpersons. However, the Board notes that the criteria for inclusion or exclusion and the statutory criteria for determination of units have not changed. The provisions of RSA 273-A:8, I, read, in pertinent part, as follows:

"The Board or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10. In making its determination the Board should take into consideration the principle of community of interest. The community of interest may be exhibited by one or more of the following criteria, although it is not limited to such;

- (a) employees with the same conditions of employment;
- (b) employees with a history of workable and acceptable collective negotiations;
- (c) employees in the same historic craft or profession;
- (d) employees functioning within the same organizational unit.... II...persons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise."

The New Hampshire Supreme Court said in the University System v. State, supra, at Page 99:

"Community of interest is virtually a universal standard for determining appropriate units in both the public and private sectors...the factors to be considered are the skills, duties, working conditions and benefits of the employees, the organizational structure of the employer, and the extent to which the work is integrated. Ultimately the question is whether there exists a mutuality of interests and working conditions such that it is reasonable for the employees to negotiate jointly...."

Using these criteria, the Board will now turn to the two issues at hand:

I. Scope of Bargaining Unit. The University System presented extensive evidence on the question of scope of unit and propriety of inclusion of full-time faculty both at Plymouth State College and the University of New Hampshire in the proposed unit. There is agreement and the Board determines that the University of New Hampshire Manchester campus, known variously as

"UNH at Manchester" or "UNH Manchester," is a college within the University of New Hampshire, and has a dean as its head who reports to the Academic Vice President and President of UNH. The President of UNH is the Chief Executive Officer of UNH (as the President at Plymouth State College is the Chief Executive Officer at Plymouth State College). It is therefore appropriate to include UNH Manchester faculty in any faculty bargaining unit for UNH faculty. Additionally, the Board accepts the exclusions agreed upon by the parties as appropriate exclusions and will deal with the challenged employees at the appropriate time.

The thrust of the argument of the University System is that there are identical benefits for UNH and Plymouth faculty set by the Board of Trustees which is the common governing board for both institutions. Further, salary guidelines are established by the Board of Trustees for all institutions governed by it and they are common to faculty at Plymouth and UNH. The System asserts that the efficiency of government operations, a factor to be considered by the PELRB in determining the appropriate bargaining unit, argues in favor of requiring the System to have to deal with only one faculty bargaining unit (or, in reality, two, since there is already a preexisting unit at Keene, which the System does not request be included). Testimony was received that it would be expensive to administer separate benefits for three different campuses, to conduct negotiations with three different units, and the resulting expenses and administrative disruption would interfere with the efficient conduct of government operations to the extent that it should not be required.

All witnesses presented by either party admitted that there did not appear to be any self-felt community of interest between the faculties at Plymouth State College and the University of New Hampshire. Further, testimony from a Plymouth State College professor indicated that there was a strong desire by the Plymouth faculty not to be included, the Faculty Welfare Committee at Plymouth State College had circulated a sheet protesting the requested unit and the Plymouth faculty felt they would be swallowed up if they were included in one unit with the University faculty. Other testimony indicated that there was no interaction between the faculties at the two institutions in any significant manner, they had no common faculty committees, had no common administrative functions, did not teach at each other's institutions and had institutional loyalty to the College at which they taught and not to the larger System.

Further evidence indicated that while salary and benefits provided at Keene State College where indeed under the same guidelines set by the Board of Trustees, variations resulted from negotiations between the University System and the union at Keene, resulting in negotiated salary structures and benefits which, in at least one instance, differed from those available at the other institutions of the System. There was no dispute that negotiations are conducted in the name of the Board of Trustees and coordinated by University System personnel, although evidence established that some members of the negotiating team at Keene were campus people selected by the President of Keene State College.

There was substantial testimony given about the size and

purpose of the System office, its functions in providing administration and coordination for all institutions in the System and, as noted above, studies of common salary matters, personnel terms, and benefits were offered to and reviewed by the Board. There was no dispute that personnel policies issued by the System apply to all campuses, as do pay and benefits policies, as noted.

Undisputed testimony established that the University of New Hampshire has seven colleges: the College of Liberal Arts; the College of Engineering; the School of Health and Human Services; the Whittemore School of Business and Economics; the Thompson School; the College of Life Sciences and Agriculture; and UNH Manchester. Plymouth State has one college, and some of its faculty teach the MBA program offered at the UNH Manchester location, resulting in a Plymouth State College degree. Tuition differs at the University of New Hampshire and the State Colleges. There is a separate tuition schedule for UNH Manchester. Merit and equity decision processes applicable to faculty vary at the two institutions and evidence indicated they also vary among the colleges and departments at UNH. Tenure recommendations at both UNH and Plymouth State College are the result of department, college (at UNH), and executive action, which are then forwarded by the President of the institution to the Academic Affairs Committee of the Board of Trustees through the Chancellor's Office, but the Chancellor's Office has no part in promotion and tenure decisions. There was no evidence of any System-wide termination for cause policy which is a campus decision, reviewed by the Board of Trustees without System office input. The academic calendars at the institutions differ,

although they are established in accordance with policies set forth by the Board of Trustees. Tenure of faculty is not transferable from one institution to another, faculty being tenured to the institution at which they received tenure. UNH Manchester faculty receive tenure at UNH Manchester and not at the University in general. On the other hand, evidence indicated that faculty look to the Board of Trustees and not the institution President in the event there are economic crises, since it is the Board of Trustees and the System which have most contact with the State, and it is the Board of Trustees which sets tuition rates.

Thus, there are factors supporting both positions on the scope issue. On balance, based on all of the evidence received on the scope question, the Board rules that the appropriate unit for full-time faculty at the University of New Hampshire is University of New Hampshire faculty at Durham and Manchester. Plymouth State College faculty should not be included. Significantly, there was no evidence from any person that there was a self-felt community of interest between the faculty at Plymouth State College and at the University of New Hampshire. These separate institutions have separate Chief Executive Officers, separate promotion and tenure systems, separate review systems, separate merit systems, separate committee structures which do not overlap or have contact with each other. (Indeed, one witness presented the startling evidence that he was not even aware of whether there was a department similar to his department at the other institution.) It is clear that there is no self-felt community of interest between the faculties and they operate independently.

Reviewing the criteria in RSA 273-A:8 stated above, the Board finds that the employees have some of the same conditions of employment but that the most significant conditions are not common.

Although the faculty at both institutions are paid and receive benefits under the same Trustee policies, the law and the evidence indicate they could negotiate separate items should they desire to be represented by any employee organization.

Significantly, the faculty at Plymouth State College have not petitioned for an election and to adopt the System's scope of unit would require an election of employees who have not asked for it. The fact that there is no self-felt community of interest, while not determinative, is an influential factor and the unanimity of opinion from both administrators and faculty on that subject was instructive. The employees have no history of workable and acceptable collective negotiations. They are in the same historic craft or profession. They certainly do not function within the same organizational unit and it would strain the principles laid down under New Hampshire labor law to include them in the same unit.

Therefore, on the issue of scope, the Board establishes the unit as all full-time faculty at the University of New Hampshire as petitioned by the AAUP with the inclusions and exclusions noted above, and subject to the decision on department chairpersons below.

II. Department Chairpersons. The issue of department chairpersons was the subject of extensive testimony from deans, chairpersons, and faculty members. It is apparent to the Board that the functions of various chairpersons and the operations of various departments at UNH differ. It is also apparent that department chairpersons are either the lowest level of supervisory administration or the highest level of faculty and that they share characteristics of each. (It is interesting to note that no evidence was presented on the role of faculty chairpersons at Plymouth State College, and therefore there is no consideration given to the function of chairpersons at Plymouth State both because of the lack of evidence and because of the findings of the PELRB in I above.) Department chairpersons are selected by the College for three-year terms. The Faculty Handbook of the University of New Hampshire, Joint Exhibit 5, at Page 6 states the following:

"Department chairpersons are tenure-track faculty of the department and retain all the rights and privileges of tenure-track faculty while serving in this capacity. Appointments as department chairpersons are for periods of three years and are renewable. Appointments are made by the President on the basis of recommendations initiated by the deans of the schools and colleges. The dean's recommendation is made only after agreement is reached between the dean and a majority of the tenure-track faculty in the department concerned. As a preliminary step, the dean will meet with members of the department as a group to discuss the choice of a chairperson. The dean may also, on his/her initiative or the faculty member's initiative, discuss possibilities individually. Before finally making a recommendation, the dean will enter into full group discussion with the tenure-track faculty to arrive at agreement with the majority of this group concerning a recommendation."

Evidence established that among the administrative roles served by the department chairpersons are scheduling classes, scheduling hours, scheduling classrooms, administering department budgets, administering and supervising staff personnel serving the department, assigning space for offices, insuring that College policies are observed, explaining College policies to other department faculty, and attending College-wide meetings to advise deans. Also, evidence established that some department chairs have been in office for extended periods of time and some chairs rotate frequently.

Significantly, the evidence established that faculty in general also perform the roles which faculty chairpersons perform, since the role of a faculty member involves significant responsibility to implement the policies of the institution and since the University operates through committees which advise the chairs of the departments on various matters. In some departments, all faculty act as a committee of the whole and the chairperson is the coordinator and first among equals to see to the implementation of decisions collectively made.

Committee chairpersons remain full-time teaching faculty. They receive a lesser teaching load in recognition of their additional duties as chairpersons. In addition, they receive summer stipends which vary in amount but which do not change their base salary. Promotion and tenure recommendations within departments are coordinated through the department chairperson but are not made by that person. Rather, they are made by a promotion and tenure committee.

While a department chairperson position mixes the elements of faculty member and administrator to some degree, the Board must examine whether there is significant supervisory authority over other personnel in the proposed bargaining unit, not shared by other faculty and whether the faculty chairpersons have significant responsibility in areas of confidentiality in the administering of personnel and collective bargaining aspects of operations. The Board concludes that there are insufficient factors involving supervisory authority or confidentiality to warrant the exclusion of these faculty members from the bargaining unit comprised of all full-time faculty. In essence, the job of a department chairperson is to coordinate the activities of the department, act as internal department spokesman, administer internal departmental activities and serve as the spokesman of the department to the University and the spokesman of the University to the department. Faculty are unique. The job of every faculty member is to implement policy, supervise his or her own teaching, conduct research, advise students and operate independently within the traditional roles of a university. This is different from "line" employees in the traditional sense. All of these responsibilities and activities might argue against any faculty members being unionized. (See, for example, NLRB v. Yeshiva University 444 U.S. 672 (1980).) However, there is no such distinction in our law. The Board will not exclude committee chairpersons because they may have a higher degree of these activities common to all faculty or on account of the additional

responsibilities which they have. While not discounting the importance of faculty chairpersons, the Board cannot find that they are supervisors or confidential employees to the degree required to exclude them from the bargaining unit.

In University System v. State, supra, the Supreme Court sustained this Board in rejecting the argument of the University System that because the chairpersons are appointed by the President, they were therefore excluded under the definition of the law. The Court said, at 117 NH 96, 101 "The inclusion of department chairmen in the bargaining unit of academic faculty does not violate the provisions of RSA 273-A:1IX(b)...excluding persons appointed by the employer's Chief Executive." Indeed, the Board finds that the approval of the selection of department chairpersons by the President after the assent of the majority of the faculty members and the dean is a mere ministerial act, no different from the fact that all faculty are "appointed" by the President. The President as chief executive officer of the University of New Hampshire does not exercise significant independent action in appointing department chairpersons. This is not the kind of employee intended by the provision concerning the exclusion of those appointed by the chief executive. RSA 273-A:1IX(b).

While the department chairpersons have access to personnel files to a slightly greater degree than other faculty, this does not appear to put them in such a confidential relationship to the employer as to require their exclusion.

For all these reasons, the Board finds that department chairpersons should be included and they are hereby included in the unit of full-time faculty.

Order

The Board hereby establishes the appropriate unit as all full-time faculty at the University of New Hampshire including librarians and department chairpersons, and excluding those positions set forth earlier in this decision, and with the provision for challenges agreed upon by the parties.

A pre-election conference to determine the list of eligible voters and to schedule the date and location of the election shall be scheduled as expeditiously as possible in accordance with RSA 273-A:10 and the Board's Rules and Regulations Pub 303.

So ordered.

Signed this 14th day of September, 1990.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting. Also present, Executive Director, Evelyn C. LeBrun and Board Counsel Bradford E. Cook, Esq.